

(k) *In existence* means that the owner or operator has obtained all necessary preconstruction approvals or permits required by Federal, State, or local air pollution emissions and air quality laws or regulations and either has (1) begun, or caused to begin, a continuous program of physical on-site construction of the facility or (2) entered into binding agreements or contractual obligations, which cannot be cancelled or modified without substantial loss to the owner or operator, to undertake a program of construction of the facility to be completed in a reasonable time.

(l) *Installation* means an identifiable piece of process equipment.

(m) *In operation* means engaged in activity related to the primary design function of the source.

(n) *Integral vista* means a view perceived from within the mandatory Class I Federal area of a specific landmark or panorama located outside the boundary of the mandatory Class I Federal area.

(o) *Mandatory Class I Federal Area* means any area identified in part 81, subpart D of this title.

(p) *Major Stationary Source* and *major modification* mean *major stationary source* and *major modification*, respectively, as defined in § 51.24.

(q) *Natural conditions* includes naturally occurring phenomena that reduce visibility as measured in terms of visual range, contrast, or coloration.

(r) *Potential to emit* means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is federally enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source.

(s) *Reasonably attributable* means attributable by visual observation or any other technique the State deems appropriate.

(t) *Reconstruction* will be presumed to have taken place where the fixed cap-

ital cost of the new component exceeds 50 percent of the fixed capital cost of a comparable entirely new source. Any final decision as to whether reconstruction has occurred must be made in accordance with the provisions of § 60.15 (f) (1) through (3) of this title.

(u) *Secondary emissions* means emissions which occur as a result of the construction or operation of an existing stationary facility but do not come from the existing stationary facility. Secondary emissions may include, but are not limited to, emissions from ships or trains coming to or from the existing stationary facility.

(v) *Significant impairment* means, for purposes of section 303, visibility impairment which, in the judgment of the Administrator, interferes with the management, protection, preservation, or enjoyment of the visitor's visual experience of the mandatory Class I Federal area. This determination must be made on a case-by-case basis taking into account the geographic extent, intensity, duration, frequency and time of the visibility impairment, and how these factors correlate with (1) times of visitor use of the mandatory Class I Federal area, and (2) the frequency and timing of natural conditions that reduce visibility.

(w) *Stationary Source* means any building, structure, facility, or installation which emits or may emit any air pollutant.

(x) *Visibility impairment* means any humanly perceptible change in visibility (visual range, contrast, coloration) from that which would have existed under natural conditions.

(y) *Visibility in any mandatory Class I Federal area* includes any integral vista associated with that area.

§ 51.302 Implementation control strategies.

(a) *Plan Revision Procedures.* (1) Each State identified in section 300(b)(2) must submit, no later than nine months from the date of promulgation of this regulation, an implementation plan revision meeting the requirements of this subpart.

(2) (i) The State, prior to adoption of any implementation plan required by this subpart, must conduct one or more

public hearings on such plan in accordance with § 51.4.

(ii) In addition to the requirements in § 51.4, the State must provide written notification of such hearings to each affected Federal Land Manager, and other affected States, and must state where the public can inspect a summary prepared by the Federal Land Managers of their conclusions and recommendations, if any, on the proposed plan.

(3) Submission of plans as required by this subpart must be conducted in accordance with the procedures in § 51.5.

(b) *State and Federal Land Manager Coordination.* (1) The State must identify to the Federal Land Managers, in writing and within 30 days of the date of promulgation of these regulations, the title of the official to which the Federal Land Manager of any mandatory Class I Federal area can submit a recommendation on the implementation of this subpart including, but not limited to:

(i) A list of integral vistas that are to be listed by the State for the purpose of implementing section 304,

(ii) Identification of impairment of visibility in any mandatory Class I Federal area(s), and

(iii) Identification of elements for inclusion in the visibility monitoring strategy required by section 305.

(2) The State must provide opportunity for consultation, in person and at least 60 days prior to holding any public hearing on the plan, with the Federal Land Manager on the proposed SIP revision required by this subpart. This consultation must include the opportunity for the affected Federal Land Managers to discuss their:

(i) Assessment of impairment of visibility in any mandatory Class I Federal area, and

(ii) Recommendations on the development of the long-term strategy.

(3) The plan must provide procedures for continuing consultation between the State and Federal Land Manager on the implementation of the visibility protection program required by this subpart.

(c) *General Plan Requirements.* (1) The affected Federal Land Manager may certify to the State, at any time, that

there exists impairment of visibility in any mandatory Class I Federal area.

(2) The plan must contain:

(i) A long-term (10-15 years) strategy, as specified in section 305 and section 306, including such emission limitations, schedules of compliance, and such other measures including schedules for the implementation of the elements of the long-term strategy as may be necessary to make reasonable progress toward the national goal specified in section 300(a).

(ii) An assessment of visibility impairment and a discussion of how each element of the plan relates to the preventing of future or remedying of existing impairment of visibility in any mandatory Class I Federal area within the State.

(iii) Emission limitations representing BART and schedules for compliance with BART for each existing stationary facility identified according to paragraph (c)(4) of this section.

(3) The plan must require each source to maintain control equipment required by this subpart and establish procedures to ensure such control equipment is properly operated and maintained.

(4) For any existing visibility impairment the Federal Land Manager certifies to the State under paragraph (c)(1) of this section, at least 6 months prior to plan submission:

(i) The State must identify and analyze for BART each existing stationary facility which may reasonably be anticipated to cause or contribute to impairment of visibility in any mandatory Class I Federal area where the impairment in the mandatory Class I Federal area is reasonably attributable to that existing stationary facility. The State need not consider any integral vista the Federal Land Manager did not identify pursuant to section 304(b) at least 6 months before plan submission.

(ii) If the State determines that technological or economic limitations on the applicability of measurement methodology to a particular existing stationary facility would make the imposition of an emission standard infeasible it may instead prescribe a design, equipment, work practice, or other operational standard, or combination

thereof, to require the application of BART. Such standard, to the degree possible, is to set forth the emission reduction to be achieved by implementation of such design, equipment, work practice or operation, and must provide for compliance by means which achieve equivalent results.

(iii) BART must be determined for fossil-fuel fired generating plants having a total generating capacity in excess of 750 megawatts pursuant to "Guidelines for Determining Best Available Retrofit Technology for Coal-fired Power Plants and Other Existing Stationary Facilities" (1980), which is incorporated by reference, exclusive of appendix E, which was published in the FEDERAL REGISTER on February 6, 1980 (45 FR 8210). It is EPA publication No. 450/3-80-009b and is for sale from the U.S. Department of Commerce, National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161. It is also available for inspection at the Office of the Federal Register Information Center, 800 North Capitol NW., suite 700, Washington, DC.

(iv) The plan must require that each existing stationary facility required to install and operate BART do so as expeditiously as practicable but in no case later than five years after plan approval.

(v) The plan must provide for a BART analysis of any existing stationary facility that might cause or contribute to impairment of visibility in any mandatory Class I Federal area identified under this paragraph (c)(4) at such times, as determined by the Administrator, as new technology for control of the pollutant becomes reasonably available if:

(A) The pollutant is emitted by that existing stationary facility,

(B) Controls representing BART for the pollutant have not previously been required under this subpart, and

(C) The impairment of visibility in any mandatory Class I Federal area is reasonably attributable to the emissions of that pollutant.

[45 FR 80089, Dec. 2, 1980, as amended at 57 FR 40042, Sept. 1, 1992]

§ 51.303 Exemptions from control.

(a) (1) Any existing stationary facility subject to the requirement under section 302 to install, operate, and maintain BART may apply to the Administrator for an exemption from that requirement.

(2) An application under this section must include all available documentation relevant to the impact of the source's emissions on visibility in any mandatory Class I Federal area and a demonstration by the existing stationary facility that it does not or will not, by itself or in combination with other sources, emit any air pollutant which may be reasonably anticipated to cause or contribute to a significant impairment of visibility in any mandatory Class I Federal area.

(b) Any fossil-fuel fired power plant with a total generating capacity of 750 megawatts or more may receive an exemption from BART only if the owner or operator of such power plant demonstrates to the satisfaction of the Administrator that such power plant is located at such a distance from all mandatory Class I Federal areas that such power plant does not or will not, by itself or in combination with other sources, emit any air pollutant which may reasonably be anticipated to cause or contribute to significant impairment of visibility in any such mandatory Class I Federal area.

(c) Application under this section 303 must be accompanied by a written concurrence from the State with regulatory authority over the source.

(d) The existing stationary facility must give prior written notice to all affected Federal Land Managers of any application for exemption under this section 303.

(e) The Federal Land Manager may provide an initial recommendation or comment on the disposition of such application. Such recommendation, where provided, must be part of the exemption application. This recommendation is not to be construed as the concurrence required under paragraph (h) of this section.

(f) The Administrator, within 90 days of receipt of an application for exemption from control, will provide notice of receipt of an exemption application